



Washington, D.C. 20505

5 August 1988
OCA 2620-88

Mr. Marc Rotenberg
Counsel
Subcommittee on Technology and the Law
Judiciary Committee
United States Senate
Washington, D.C. 20510

Dear Marc:

Enclosed is a corrected copy of our response to Senator Leahy's 30 June letter requesting certain information on FOIA processing. This corrected copy constitutes our final response to the Committee's inquiry.

Sincerely,



Office of Congressional Affairs


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Enclosure as
stated

OCA  5 Aug 88

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Section A: "FEES ASSESSED"

Note: Questions (1) through (11) below ask for separate data from two time frames: (1) 1 January through 25 April 1987, and
(2) 26 April through 31 December 1987.

QUESTION

A(1) "How many FOIA requests were granted in whole or in part in 1987?"

ANSWER

During 1987, a total of 291 FOIA requests were granted in whole, and a total of 294 FOIA requests were granted in part. During the time frame 1 January through 25 April 1987, 102 FOIA requests were granted in whole, and 105 FOIA requests were granted in part. During the time frame 26 April through 31 December 1987, 189 FOIA requests were granted in whole, and 189 FOIA requests were granted in part.

QUESTIONS

- A(2) "For how many of these requests were fees assessed according to the 'commercial use' standard in clause (ii)(I)? List all requesters assessed fees under this clause."
- A(3) "For how many of these requests were fees assessed according to the 'non-commercial use' standard, (ii)(II)? List all requesters assessed fees under this clause."
- A(4) "For how many of these requests were fees assessed according to the 'all other' standard, (ii)(III)? List all requesters assessed fees under this clause."
- A(5) "For how many of these requests were fees waived under the 'public interest' standard, (iii)? List all requesters granted waivers under this subparagraph."
- A(6) "For how many of these requests were fee waivers denied, in whole or in part? List all requesters denied fee waivers under this subparagraph."
- A(7) "How many requests were denied because of refusal to pay fees in accordance with subparagraph (v)? For each request so denied, indicate the nature of each request and the reason for each denial."
- A(8) "How many requests were denied because of the requester's refusal to pay fees for reasons other than those specified in subparagraph (v)? Please describe each request so denied."

ANSWER

The computerized data base, in which records of FOIA requests to this agency are maintained, was designed and put in place in 1979-80 in order to facilitate (1) the annual reporting requirements to Congress as established by the FOIA as amended in 1974 by Public Law 93-502, and (2) the logging, tracking, and retrieval of basic information necessary for effective handling of the increased volume of FOIA actions which occurred following that amendment.

That data base does not include, nor will it accommodate, additional categories of information such as those which came into existence when the FOIA was again amended in 1986 by Public Law 99-570, which are not part of the annual reporting requirements to Congress, or which are or were not necessary to effective handling of FOIA requests prior to the 1986 amendment to the FOIA.

In order to answer fee-related questions (2) through (8) above, a file-by-file manual review of approximately 1044 FOIA requests received in 1987, to which these questions are applicable, would have to be conducted. Of these, 303 requests were received during the time frame 1 January through 25 April 1987; 741 requests were received during the time frame 26 April through 31 December 1987. These 1044 requests include all FOIA requests made directly to this agency and received in 1987; specifically excluded are FOIA actions involving referrals from other agencies, since fee determinations do not apply to the latter category of incoming requests. We estimate that such a manual review would require an average expenditure of approximately one hour of professional time per file, or a total expenditure of 1044 professional manhours.

This same lack of readily available data also applies to a number of the remaining questions. For clarity and brevity, our responses to these questions will hereinafter be phrased: "No data are readily available; answer would require file-by-file review." As appropriate, this statement will be accompanied by a statement designating whether such a manual review would include only FOIA requests received in 1987, only FOIA requests responded to in 1987, or both.

QUESTION

A(9) "What is the agency's policy on processing FOIA requests when the initial fee determination has been disputed?"

ANSWER

We understand "initial fee determination" to mean the initial determination made with respect to (1) whether or not a fee waiver or reduction is granted or not granted, and (2) absent a fee waiver, the

category ("commercial use, non-commercial use, all other") in which a particular requester/request is placed for fee purposes.

As set forth in 32 CFR Part 1900.25(d), " ... when anticipated charges will amount to more than \$25 and the requester has not indicated his willingness to pay applicable fees, the processing of the request shall be suspended until the requester indicates his willingness to pay."

With respect to denials of requests for fee waivers or reductions which are disputed by the requester, CIA regulations, 32 CFR Part 1900.25(c), provide that the requester may appeal such denial by writing to the Chairman of the Information Review Committee, via the Coordinator. If appropriate, the requester is invited to supply additional information pertinent to the fee waiver or reduction issue prior to consideration of such a fee appeal.

With respect to fee categorizations which are disputed by the requester, the requester may appeal such determinations, and, as appropriate, is invited to supply any additional information germane to established criteria for fee categorization and to any reconsideration of the category in which his particular request has been placed.

QUESTION

A(10) "How many FOIA requesters submitted more than ten separate FOIA requests to your agency during 1987? For each such requester, please provide the total number of FOIA requests made by that requester, and the total amount of any fees waived or fee reductions extended to that requester."

ANSWER

During 1987, more than ten FOIA requests were received directly from seven individuals or were referred from other agencies on behalf of those individuals. A listing of these requesters follows:

1 January through 25 April 1987:

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-- 12 requests
-- 21 requests

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26 April through 31 December 1987:

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-- 30 requests
-- 13 requests
-- 18 requests
-- 22 requests
-- 21 requests

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As the significance of "more than ten" data about requests made by individuals acting on their own behalf is worthy of note, so too is the significance of "more than ten" data about requests made by individuals acting on behalf of particular organizations. In point of fact, the impact of multiple requests from individuals acting on behalf of organizations has been far greater than the impact of multiple requests made by individuals acting on their own behalf. During 1987, a total of 212 such requests were made on behalf of just four organizations, consisting of 141 requests from the National Security Archive, 41 requests from the National Resources Defense Council, 19 requests on from the Center for Strategic and International Studies, and 11 requests from the Washington Post. A listing of the organizations and numbers of requests received follows:

1 January through 25 April 1987:

National Security Archive -----	35 requests
Center for Strategic and International Studies --	19 requests

26 April through 31 December 1987:

National Security Archive -----	106 requests
National Resources Defense Council -----	41 requests
Washington Post -----	11 requests

No data are readily available on any fee waivers or reductions which may have been granted; answer would require a file-by-file review of the above-referenced requests received in 1987.

QUESTION

A(11) "Please provide the best available information on the total amount of fees waived by your agency and the total amount of fee reductions during 1987."

ANSWER

No data are readily available; answer would require a file-by-file review of all requests received in 1987.

Section B: "DOCUMENT AVAILABILITY"

QUESTION

B(1) "Does your office maintain a public list of records that previously have been disclosed under FOIA?"

ANSWER

This agency does maintain a computerized listing of records previously disclosed under FOIA. Direct electronic access to this listing by the public is precluded by national security requirements. The data base is housed in a classified CIA mainframe system; access to this system can only be granted to individuals possessing a Top Secret clearance, and password access to elements of this system is determined strictly on a need-to-know basis. Indirect access, however, in the form of a printed listing of records pertinent to the requester's particular topic or topics of interest, can be made available to requesters. From such a listing, requesters may order documents of their choosing by paying applicable reproduction fees. On one occasion, a request was made to this agency for "access to a copy of the current list/index of your 'previously processed' records;" this listing was produced and, with the agreement of the requester, reproduction costs in the amount of \$500 were charged and paid.

QUESTION

- B(2) "How many, if any, requests, were not fulfilled because the requested record was not in the possession of the agency?"

ANSWER

We understand this question to be concerned with requests for documents over which this agency has determination authority but which have been given over to another agency as permanent custodian thereof. Specifically, we refer to documents from forerunner and predecessor organizations of this agency, such as the Office of Strategic Services (OSS), which have been accessioned by the National Archives and Records Administration (NARA).

With respect to the number of requests for OSS documents which have been referred to NARA: No data are readily available; answer would require a file-by-file review of all requests received in 1987.

QUESTION

- B(3) "How many, if any, requests were not fulfilled because no responsive documents were found?"

ANSWER

We understand that this question asks how many FOIA requests were received in 1987, for which no responsive records were located. In 1987, a total of 119 responses were sent to FOIA requesters advising them that no records responsive to their requests had been located.

QUESTION

B(4) "How many, if any, requests were not fulfilled because responsive documents had been altered?"

ANSWER

None.

We are genuinely puzzled by this question. It appears to be based on a premise that requests might not be fulfilled because documents, although initially identified as responsive, are subsequently determined to be nonresponsive as a result of "altering" the documents.

The management of agency records is carried out in accordance with records control schedules approved by the National Archives and Records Administration (NARA); these schedules prohibit the altering of official records.

QUESTION

B(5) "How many, if any, requests were not fulfilled because responsive documents had been destroyed?"

ANSWER

No data are available. Our computerized data base contains no information pertinent to this question. The paper files of our requests contain only the results of searches which are conducted for documents in existence as of the acceptance of a particular request. Any destruction of records would be carried out in strict accordance with our NARA-approved records control schedules.

QUESTION

B(6) "How many, if any, requests are not fulfilled initially because of insufficient specificity?"

ANSWER

We understand that this question pertains to requests which lack adequate information, or which otherwise fail to describe the records sought in a manner adequate for effective and reasonable search.

No data are readily available; answer would require a file-by-file review of all requests received in 1987.

We would note, however, that when a request lacks "sufficient specificity," we respond to the requester by asking him to supply whatever additional information is necessary in order to conduct an effective and reasonable search.

QUESTIONS

B(6)(a) "How many of these requests were resubmitted after modification?"

B(6)(b) "How many of these modified requests were subsequently granted?"

ANSWERS

No data are readily available; answers would require a file-by-file review of all FOIA requests received and all requests granted in 1987.

QUESTION

B(6)(c) "Does the agency assist requesters in reformulating their requests in those instances in which it has determined that the original request was not specific enough?"

ANSWER

32 CFR 1900.31(c)(2) states that if a requester has "failed to reasonably describe the records of interest, [the Coordinator] shall so inform the originator of the communication promptly, in writing, and he may offer to assist the originator in revising and perfecting the description of the records of interest." This statement reflects current practice.

Section C: "EXPEDITION"

QUESTION

C(1) "Does the agency have any procedure for expediting FOIA requests? If so, what factors are considered?"

ANSWER

Yes, this agency does have procedures for expediting FOIA requests. In accordance with guidelines issued by the Department of Justice, primary considerations include demonstrable evidence that an individual's life or personal safety would be jeopardized by the failure to process a request immediately, or that substantial due process rights of the requester would be impaired by the failure to immediately process information which is not otherwise available.

The factors considered include establishment of (a) the existence of a genuine need for the material requested, (b) the necessity for urgency, and (c) the willingness by the requester to limit the scope of the request in a manner to facilitate processing.

QUESTION

- C(2) "How does a determination to expedite a FOIA request change the processing?"

ANSWER

As soon as an FOIA request has been granted expedited processing, the request is appropriately "flagged" for priority handling. Consideration of the request moves ahead of ongoing actions on requests received at earlier dates, and continues on a priority basis until all actions have been completed.

QUESTION

- C(3) "How many requests were granted under the expedited procedure in 1987?"

ANSWER

No data are readily available; answer would require file-by-file review of all FOIA requests received in 1987.

SECTION D: "STAFFING"

QUESTIONS

- D(1) "How many professional staff members were employed in the FOIA office in 1987? How many were full-time? How many were part-time?"
- D(2) "How many professional staff vacancies occurred in 1987? What was the average period of time required to fill these positions?"
- D(3) "What was the average period of employment for professional staff members in the FOIA office, as of December 31, 1987?"
- D(4) "How many support staff members were employed in the FOIA office in 1987? How many were full-time? How many were part-time?"
- D(5) "How many support staff vacancies occurred in 1987? What was the average period of time required to fill these positions?"

D(6) "What was the average period of employment for support staff members in the FOIA office, as of December 31, 1987?"

ANSWER

This agency's records of personnel expenditures dedicated to requests made pursuant to the FOIA, Privacy Act, and mandatory classification review are maintained primarily in terms of employee hours and not in numbers of personnel. During 1987, a total of 170,436 employee hours were expended on the processing of FOIA, Privacy Act, and mandatory classification review requests. On requests made solely pursuant to the FOIA, a total of 105,469 employee hours were expended in 1987, consisting of 77,857 professional hours and 27,612 support staff hours.

We do not currently maintain statistics relating to numbers of personnel engaged in FOIA-related duties; such statistics would have very limited significance or meaning in terms of our overall processing of FOIA requests. Specifically, many personnel, whose primary responsibilities are in matters other than FOIA, are called upon from time to time, and for varying periods of time, because their particular expertise is required to source and evaluate sensitive or particular aspects of information contained in specific documents undergoing FOIA review.

From our final Congressional report on performance under the CIA Information Act, we can advise that 115 Agency employees were primarily or entirely tasked with processing FOIA, Privacy Act, and mandatory classification requests in 1986. Of these, 74 were full-time staff, 18 were part-time staff, and 23 were retired annuitants working two or more days per week.

Section E: "ELECTRONIC RECORDS"

QUESTION

E(1) "How many FOIA requests were for information maintained by your agency in an electronic format, e.g. magnetic tape, magnetic disk, optical disk, or similar non-paper record system?"

ANSWER

No precise data are available; precise data would require a file-by-file review of all requests received in 1987. Based solely on personal recall, however, there have been very few requests for electronic as well as any other type of "non-paper" records.

(a) Two requesters asked for a copy of a film entitled "Pilots in Pajamas." The requesters were offered a choice of the record in film

format (at actual reproduction cost of \$1900), or in VHS video format (at actual reproduction cost of \$200); both ordered and received the VHS video format.

(b) One other requester asked for tapes of broadcasts made from Hanoi during the Vietnam War, and was advised that the tapes in question are actually "dictabelts" for which the agency lacks extant technology necessary for making a copy. The requester then asked if he could try to make copies himself; we replied in the affirmative, stating that an appointment for access would be arranged at his convenience. To date, we have heard nothing further from the requester.

(c) Another requester asked for copies of videotapes, photographs, "or any other material" showing the "captivity, torture, interrogation and imprisonment of William F. Buckley." Under the provisions of the FOIA and the CIA Information Act, the requester was advised that no responsive records had been located.

(d) Finally, one requester, who had received a paper copy in response to his request for a "copy" of an index to previously released documents, subsequently asked for a copy of the index on magnetic tape. Resolution of this matter is presently before the courts.

QUESTION

E(2) "How many requests for records maintained by the agency in an electronic format were denied because (a) the agency determined that the request was not a 'record' under the FOIA, (b) the request would cause an undue burden for the agency, or (c) for some other reason? In each instance, describe the nature of the request, the format in which the information is stored, and a copy of the agency determination or notice."

ANSWER

The medium of a document -- be it paper, tape, disk, film, or other -- does not affect the determination as to whether it is a record for purposes of the FOIA or the Federal Records Act. Thus, no requests have been denied because the information sought was in electronic format.

With respect to the denial of requests because they did not seek "agency records" under the FOIA, data are not available. However, from recall, the request referred to in E(1)(d) above is relevant. There, the requester initially asked for a "copy" of the index; he was initially advised (copy of response attached) that his request for the index did not meet the definition of a record as defined in our regulations, 32 CFR §1900.3(g)(1). This request asked for an "index;" an index is a finding device, not a record. The definition of a record is set forth in 44 USC §3301, "Definition of records," which states:

"As used in this chapter, 'records' includes all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of the data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included."

This requester's subsequent interest in obtaining the index in magnetic form is presently before the courts.

No requests for records maintained in electronic format were denied because of "undue burden," or "some other reason."

QUESTION

E(3) "How many requests were made for records to be provided in a particular electronic format, e.g. magnetic tape? In each instance, was the information released in the format requested? How was each determination made? How is the determination made if the record exists only in an electronic format?"

ANSWER

No data available; from recall, only one such request, the request referred to in E(1)(d) above. Initially, the request was denied because the information sought did not meet the definition of "agency records" under the FOIA. Subsequently, as a matter of administrative discretion, the "agency records" requirement was waived and a paper copy provided; security requirements precluded the public dissemination of the information in electronic form or magnetic media. Such determinations -- to release paper copies -- are consistently made for all records existing in electronic format.

QUESTION

E(4) "Approximately what percentage of records disclosed under FOIA in 1987 were stored by the agency in an electronic format? In what formats were they stored? In what formats were they disclosed?"

ANSWER

No data as to what percentage of agency records are stored in electronic form. As set forth in NARA-approved records schedules, the

agency utilizes magnetic tape, magnetic disk, and optical disk for electronic storage. Regardless of the electronic form in which they are stored, such agency records are invariably disclosed in paper format.

QUESTION

- E(5) "Has the agency considered facilitating record disclosure under FOIA in developing plans for agency record automation? If so, how?"

ANSWER

No; the objectives of our records automation program are security and mission fulfillment. The disclosure of records necessitates an item-by-item review of the contents and does not appear to be susceptible to records automation plans.

QUESTION

- E(6) "Has the agency established any policy for disclosure of electronic records to FOIA requesters? If so, please provide a statement of the policy."

ANSWER

No, we have not, because we do not differentiate between the records in paper format and records in electronic format. For purposes of access under the FOIA, however, our current practice is to disclose such records only in paper format because of security considerations.

QUESTION

- E(7) "Has the agency denied requests for previously disclosed records because the information no longer exists in a paper format?"

ANSWER

No. A record may exist in one of several media, such as paper, microfiche, electronic form and the like; the record, regardless of media, would be converted to paper format, reviewed for releasability, and released as appropriate.

QUESTION

- E(8) "How are fee determinations made for the disclosure of records in electronic formats so as to be consistent with the requirements of the Freedom of Information Reform Act?"

ANSWER

32 CFR 1900.25(G)(8) states that "[f]or duplication of non-paper media (film, magnetic tape, diskette, etc.) or any document which cannot be reproduced on a standard office copier, actual direct cost [shall be the cost of the document]." This same "actual cost" criterion would also be applicable to requests for releasable records which, although available in paper format, are specifically requested in electronic format.

[redacted]
The National Security Archive
Suite 500
1755 Massachusetts Avenue, NW
Washington, DC 20036

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29 OCT 1987

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Reference: [redacted]

Dear [redacted]

STAT

This acknowledges receipt of your 22 September 1987 Freedom of Information Act (FOIA) request on behalf of the National Security Archive. Specifically, you have requested "access to a copy of the current list/index of [our] 'previously processed' records" which was referred to in our Handbook of Information and Records Management.

We do not regard the index you have requested as a "record" within the purview of the FOIA (see 32 CFR 1500.3(g)(1)). It is, therefore, not a record to be produced in response to an FOIA request.

As a practical matter, however, even if actual access to the index were possible, it would not prove a very convenient or effective means of achieving your goal. The entries are not grouped by subjects; frequently, the entries are not as descriptive as a researcher would hope; and the problems those limitations create are heavily compounded by the very large volume of index entries overall. Basically, the index was not designed to facilitate broad, unfocused research of the kind you have described.

Moreover, to the extent that the index may reflect indexing practices and format unique to the CIA, and thus revealing of intelligence methods, the index in its entirety would be exempt from public access pursuant to FOIA exemption (b)(3), based upon 50 U.S.C. 403(d)(3).

In the alternative, we are prepared to make available to you copies of previously released documents, on topics you specify, for the standard copying cost of 10¢ per page.

Thank you for your interest in the CIA.

Sincerely,

Lee S. Strickland
Lee S. Strickland
Information and Privacy Coordinator